

October 16, 2003

**VIA HAND DELIVERY**

Brian Kelley  
San Diego Regional Water Quality Control Board  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123

Re: Waste Discharge Requirements ("Tentative Order No. R9-2003-0228") and Cease and Desist Order ("Tentative Order No. R9-2003-0285") for California Department of Parks and Recreation, Crystal Cove State Park, El Morro Trailer Park, Orange County

Dear Mr. Kelley:

Per my conversations with Mr. Robertus this afternoon I am writing to you concerning the above referenced Orders. We believe that San Diego Regional Water Quality Control Board ("SDRWQCB") staff may have come to several erroneous findings of facts as a result of an inadequate Report of Waster Discharge ("RWD") prepared by the Department of Parks and Recreation ("DPR"). We request that you review this letter and the attachments thereto and then meet with us prior to making any final decision concerning calendaring these items for the November Board meeting.

By way of background, this firm represents the El Morro Community Association ("EMCA") in the above-referenced matter. EMCA is an association of the residents of El Morro Village. The above-referenced tentative Orders are of great interest to the residents as any failure to comply with the tentative Orders by DPR could result in their eviction.

**BACKGROUND**

On Friday, August 15, 2003, Mr. Victor Vasquez of your staff was kind enough to send by electronic transmission, copies of the initial tentative Orders and cover letter executed by Mr. Michael McCann. SDRWQCB staff originally scheduled these orders for hearing at the September San Diego Regional Water Control Board ("SDRWQCB") meeting. Based upon preliminary comments from this office, and at the request of DPR, your staff agreed to take the matter off calendar until the November Board meeting.

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## ANALYSIS

In preparation for that meeting, EMCA engaged the services of Ms. Barbara Bradley, Principal, Advanced On Site Systems, Inc. and Ms. Joan Brackin, Principal, TAO Technologies, Inc. to review the proposed Orders. Ms. Bradley and Ms. Brackin are recognized state-wide as experts in the area of on-site wastewater treatment technologies. Their resumes are attached hereto for your review as Exhibit A.

On or about October 6, 2003, this office received copies of revised tentative Orders No. R9-2003-0228 and R9-2003-0285. EMCA requested Ms. Brackin and Ms. Bradley to review and revise their evaluation of the Orders based on those revisions. While discussed more specifically in their report attached hereto as Exhibit B, Ms. Bradley and Ms. Brackin reported the following conclusions:

- 1) The RWD prepared by DPR contains significant technical flaws and unsupported conclusions.
- 2) SDRWQCB staff appears to have misconstrued some of the water quality data presented in the RWD, resulting in unsupported findings regarding both water quality and hydrological data.
- 3) The Orders appear to misinterpret appropriate water quality objectives as identified in the Water Quality Control Plan – San Diego Basin.
- 4) The Orders fail to provide appropriate discharge specifications for either the east or the west El Morro Trailer Park ("EMTP") wastewater treatment systems.
- 5) The RWD and the Orders failed to consider the feasibility of connecting EMTP to the existing sanitary sewer system.
- 6) Compliance with the Orders as written, including 100-year flood protection, require DPR to engineer and build a complete new sanitary disposal system. This is a significantly greater project than a simple repair. However, neither DPR nor SDRWQCB staff engaged in an analysis of the environmental impacts of such a project.

From a procedural standpoint, we also find these Orders curious. Clearly, the RWD does not comport with the requirements outlined in the SDRWQCB staff's Order to DPR dated April 10, 2001 and attached hereto as Exhibit C. Neither does it appear that the reports or the Orders comport with SDRWQCB Resolution 79-44 attached hereto as Exhibit D. Finally, both the RWD and the Orders appear at significant variance with recent guidance provided this office concerning the issuance of WDRs for community septic systems. See Exhibit E attached hereto.

EMCA believes that the uniqueness of these Orders may arise from certain representations made to SDRWQCB staff by representatives of DPR. Specifically, it appears that DPR represented to SDRWQCB's staff that El Morro Village will soon be demolished and replaced by an itinerant trailer camp next to an elementary school, and that the trailer camp will be serviced through a sanitary sewer line currently under construction by DPR. See Exhibit F. Thus, SDRWQCB staff may be under the misconception that the WDR would never be implemented and

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therefore, the RWD should not be given the same scrutiny as would apply to other applications. Nothing could be further from the truth.

The fact is that many Orange County elected officials and parents groups vigorously oppose DPR's proposal. See Exhibit G. DPR's CEQA analysis of its itinerant trailer camp proposal is currently being appealed. Finally, given the state's current fiscal condition, it is unclear where DPR will find the hundreds of millions of dollars required to meet its statutory requirements to re-locate the El Morro Village residents. Given all of these factors, it appears likely that El Morro Village will continue to operate in its current form for the foreseeable future. 9

### CONCLUSIONS

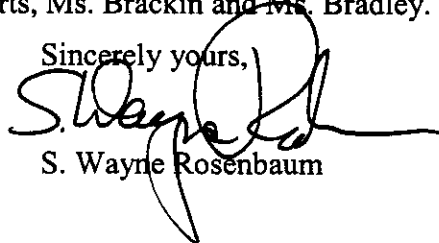
EMCA supports SDRWQCB staff's desire to protect the water resources of the region. In fact, EMCA members have assessed themselves over \$700,000 to create a reserve to fund any required engineering solution. However, as discussed in this letter and the attached exhibits, EMCA must question the science, procedures, and policies on which SDRWQCB staff relied in arriving at these tentative Orders.

In part, EMCA's concerns may arise from a lack of communication between itself and SDRWQCB staff. EMCA believes that it has important technical data and expertise that SDRWQCB staff should consider fully prior to the preparation of any Order. If this is the case, then once SDRWQCB staff has had an opportunity to review the attached materials, a meeting between SDRWQCB staff and EMCA representatives could resolve the entire matter.

The El Morro residents fear that DPR will use these tentative Orders, as written, to evict EMCA members from their homes. Thus, the apparent disconnect between the science, procedures and politics that may be driving these Orders as currently written requires EMCA to object.

It is EMCA's hope that SDRWQCB staff will take the tentative Orders off calendar so that they will have sufficient opportunity to meet with EMCA's representatives and resolve the questions and concerns raised herein. However, should SDRWQCB staff choose to proceed to hearing on November 12, 2003, EMCA hereby requests that this letter and the attachments thereto be provided to SDRWQCB Board members' as part of their board packages. Further, should this matter remain on calendar for the November 12, 2003 meeting, EMCA formally requests the right to cross-examine SDRWQCB staff involved in the preparation of these Orders and the opportunity to present the direct testimony of EMCA's experts, Ms. Brackin and Ms. Bradley.

Sincerely yours,



S. Wayne Rosenbaum

SWR/lis

cc: John Robertus  
Michael McCann  
~~V. [REDACTED]~~  
John Richards